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SENATE BILL 808

Local Government and Regional Affairs Committee Substitute Adopted 6/2/93

Third Edition Engrossed 6/28/93

House Committee Substitute Favorable 7/15/93

Short Title: Hillsborough Meals Tax.

(Local)

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Sponsors:

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Referred to:

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April 12, 1993

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF HILLSBOROUGH TO IMPOSE A  
PREPARED FOOD AND BEVERAGE TAX.

The General Assembly of North Carolina enacts:

Section 1. Hillsborough Prepared Food and Beverage Tax.

(a) Authorization. – The board of commissioners of the Town of Hillsborough (the town board) may, by resolution after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the Town of Hillsborough at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The tax applies to prepared food and beverages served in the Town of Hillsborough even if the caterer serving them is not a resident of the town; the tax does not apply to prepared food and beverages served outside the town even if the caterer serving it is a resident of the town.

(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. In addition, the term "prepared food and beverages" means any meals, food, or beverages to which a retailer has added value or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption. The provisions of

1 Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the  
2 extent they are not inconsistent with the provisions of this section.

3 (c) Exemptions. – The prepared food and beverage tax does not apply to the  
4 following sales of prepared food and beverages:

5 (1) Prepared food and beverages served to residents in boarding houses  
6 and sold together on a periodic basis with rental of a sleeping room or  
7 lodging.

8 (2) Retail sales exempt from taxation under G.S. 105-164.13.

9 (3) Retail sales through or by means of vending machines.

10 (4) Prepared food and beverages served by a retailer subject to the local  
11 occupancy tax if the charge for the meals or prepared food or  
12 beverages is included in a single, nonitemized sales price together with  
13 the charge for rental of a room, lodging, or accommodation furnished  
14 by the retailer.

15 (5) Prepared food and beverages furnished without charge by an employer  
16 to an employee.

17 (6) Retail sales by grocers or by grocery sections of supermarkets or other  
18 diversified retail establishments, other than sales of prepared food and  
19 beverages in the delicatessen or similar department of the grocer or  
20 grocery section.

21 (d) Collection. – Every retailer subject to the tax levied under this section shall,  
22 on and after the effective date of the levy of the tax, collect the tax. This tax shall be  
23 collected as part of the charge for furnishing prepared food and beverages. The tax shall be  
24 added and charged separately from the sales records, and shall be paid by the  
25 purchaser to the retailer as trustee for and on account of the town. The tax shall be  
26 added to the sales price and shall be passed on to the purchaser instead of being borne  
27 by the retailer. The town shall design, print, and furnish to all appropriate businesses  
28 and persons in the town the necessary forms for filing returns and instructions to ensure  
29 the full collection of the tax.

30 (e) Administration. – The town shall administer a tax levied under this  
31 section. A tax levied under this section is due and payable to the town's finance officer  
32 in monthly installments on or before the 25th day of the month following the month in  
33 which the tax accrues. Every retailer liable for the tax shall, on or before the 25th day  
34 of each month, prepare and render a return on a form prescribed by the town. The  
35 return shall show the total gross receipts derived in the preceding month from sales to  
36 which the tax applies.

37 A return filed with the town's finance officer under this section is not a public  
38 record as defined by G.S. 132-1 and may not be disclosed except as required by law.

39 (f) Refunds. – The town shall refund to a nonprofit or governmental entity  
40 the prepared food and beverage tax paid by the entity on eligible purchases of prepared  
41 food and beverages. A nonprofit or governmental entity's purchase of prepared food  
42 and beverages is eligible for a refund under this subsection if the entity is entitled to a  
43 refund under G.S. 105-164.14 of local sales and use tax paid on the purchase. The time  
44 limitations, application requirements, penalties, and restrictions provided in G.S. 105-

1 164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations,  
2 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c), (d),  
3 and (e) shall apply to refunds to governmental entities. When an entity applies for a  
4 refund of the prepared food and beverage tax paid by it on purchases, it shall attach to  
5 its application a copy of the application submitted to the Department of Revenue under  
6 G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An  
7 applicant for a refund under this subsection shall provide any information required by  
8 the town to substantiate the claim.

9 (g) Penalties. – A person, firm, corporation, or association who fails or  
10 refuses to file a return required by this section shall pay a penalty of two dollars (\$2.00)  
11 for each day's omission, subject to a maximum of five hundred dollars (\$500.00). In  
12 case of failure or refusal to file the return or pay the tax for a period of 30 days after the  
13 time required for filing the return or for paying the tax, there shall be an additional tax,  
14 as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an  
15 additional tax of five percent (5%) for each additional month or fraction thereof until the  
16 tax is paid. The town board may, for good cause shown, compromise or forgive the  
17 additional tax penalties imposed by this section.

18 A person who willfully attempts in any manner to evade a tax imposed under  
19 this section or who willfully fails to pay the tax or make and file a return shall, in  
20 addition to all other penalties provided by law, be guilty of a misdemeanor and shall be  
21 punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment not to  
22 exceed six months, or both.

23 (h) Use of Proceeds. – The Town of Hillsborough shall remit the net  
24 proceeds of the tax levied under this section on a monthly basis to the Hillsborough  
25 Tourism Board. The Tourism Board may deduct the cost of its annual audit from the  
26 proceeds remitted to it.

27 The Tourism Board shall use the remaining net proceeds of the tax as  
28 follows:

- 29 (1) Sixty percent (60%) shall be used to provide visitor services. Visitor  
30 services may include any of the following:
- 31 a. Operation of a center where visitors can be provided with  
32 information about the community, about facilities and  
33 businesses in it, and about points of historical or cultural  
34 interest.
  - 35 b. Production and distribution of a free directory of restaurants to  
36 include the name, address, and phone number of each restaurant  
37 in the town.
  - 38 c. Production and distribution of pamphlets, film clips, and other  
39 informational materials on the community.
  - 40 d. Advertising the town and publicizing special events in it.
  - 41 e. Doing market research pertaining to tourism.
  - 42 f. Responding to mail and telephone inquiries submitted by  
43 visitors or potential visitors.

1           g.       Providing other services to visitors designed to make their stay  
2                   pleasant and instructive.

3           (2)     Forty percent (40%) shall be used for facilities, programs, and services  
4                   designed to attract tourists to the town.

5           Beginning two years after a tax levied under this section has been in effect,  
6 the town board, taking into account the experience gained in using the tax proceeds,  
7 may change the percentages set out in subdivisions (1) and (2) above. The town board  
8 may not, however, authorize the use of the tax proceeds for any purpose other than  
9 those provided in subdivisions (1) and (2) above.

10          The Tourism Board may expend funds only for public purposes. The  
11 Tourism Board shall report quarterly and at the close of the fiscal year to the town board  
12 on its receipts and expenditures for the preceding quarter and year in such detail as the  
13 town board may require. The Tourism Board may not, without the prior approval of the  
14 town board, purchase any real estate, nor may it spend more than five thousand dollars  
15 (\$5,000) for any item covered by subdivision (2) above without the prior approval of the  
16 town board.

17          (i) Effective Date of Levy. – A tax levied under this section shall become  
18 effective on the date specified in the resolution levying the tax. The date must be the  
19 first day of a calendar month and may not be before January 1, 1994, and before the first  
20 day of the fourth month after the date that the resolution is adopted.

21          (j) Repeal. – A tax levied under this section may be repealed by a resolution  
22 adopted by the board of commissioners of the Town of Hillsborough. Any repeal shall  
23 become effective on the first day of a month and may not become effective until the end  
24 of the fiscal year in which the repeal resolution is adopted. Repeal of a tax levied under  
25 this section does not affect a liability for a tax that attached before the effective date of  
26 the repeal, nor does it affect a right to a refund of a tax that accrued before the effective  
27 date of the repeal.

28          (k) Hillsborough Tourism Board. – Before or at the time the town board  
29 adopts a resolution levying a tax under this section, it shall adopt a resolution creating a  
30 Hillsborough Tourism Board, which shall be a public authority under the Local  
31 Government Budget and Fiscal Control Act. The Tourism Board shall consist of not  
32 more than nine members, all appointed by the town board. The members shall represent  
33 four organizations or groups in the community, as provided below, and one individual  
34 may represent more than one of these organizations or groups. In addition, the town  
35 board may appoint representatives of the public at large as long as the number of  
36 members of the Tourism Board does not exceed nine. The membership of the Tourism  
37 Board shall include the following:

38           (1)     One member who is a member of the town board.

39           (2)     One member who is a member of the Hillsborough Area Chamber of  
40                   Commerce. This member shall be chosen by the town board from  
41                   nominees submitted by the board of directors of the Hillsborough Area  
42                   Chamber of Commerce.

43           (3)     Four members who are owners or operators of restaurants in  
44                   Hillsborough that are affected by this section.

1           (4) One member chosen by the town board from nominees submitted by  
2           the Alliance for Historic Hillsborough, Inc.

3           In appointing members to the initial Tourism Board, the town board shall  
4 designate roughly half as having terms of one year and the balance as having terms of  
5 two years. In subsequent years, all members shall be appointed for two-year terms.  
6 Members shall serve the full term for which appointed regardless of whether they  
7 continue to be affiliated with the organization or group which they originally  
8 represented.

9           All members of the Tourism Board shall serve without compensation. The  
10 town board may remove a member of the Tourism Board only for good cause.

11           The Tourism Board shall elect a Chair and other officers from among its  
12 members, each to serve one-year terms. The Tourism Board shall meet at least  
13 quarterly on call of the Chair or of any three members. It shall adopt rules of procedure  
14 to govern its meetings. The Tourism Board shall promote tourism in Hillsborough and  
15 otherwise carry out the duties prescribed in this section. It may, if it sees fit, perform its  
16 duties by contracting with appropriate individuals or organizations.

17           Sec. 2. This act is effective upon ratification.